

State of California
AIR RESOURCES BOARD

Summary of Board Meeting
December 13, 2001

Air Resources Board
Auditorium, Annex IV
9528 Telstar Avenue
El Monte, California

MEMBERS PRESENT: Hons. Alan C. Lloyd, Ph.D., Chairman
Dr. William A. Burke
Joseph C. Calhoun, P.E.
Doreen D'Adamo
C. Hugh Friedman
William F. Friedman, M.D.
Matthew R. McKinnon
Barbara Patrick
Barbara Riordan
Ron Roberts

AGENDA ITEM #

01-10-1 Public Hearing to Adopt Title 13, California Code of Regulations, Section 1969, and Title 17, California Code of Regulations, Sections 60060.1 through 60060.34, Regulations for the Availability of California Motor Vehicle Service Information.

SUMMARY OF AGENDA ITEM:

Staff proposed adoption of regulations that require motor vehicle manufacturers to make available dealership-quality, emission-related service information to independent service facilities and aftermarket part manufacturers. The proposal would also require manufacturers to make available for sale dealership diagnostic tools and data stream information that could be used by aftermarket toolmakers. ARB was specifically required to develop this regulation by Health and Safety Code section 43105.5, which was established by Senate Bill (SB) 1146. The regulations would apply to manufacturers of 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles equipped with second-generation on-board diagnostic (OBD II) systems.

California's stringent motor vehicle emission standards have resulted in highly sophisticated vehicles that use advanced technologies like OBD II, precise electronic fuel systems, and other emission controls. With these high-tech emission control systems, vehicles emit far fewer emissions than those sold 10 years ago.

However, with this sophistication comes increased complexity in the maintenance, service and repair of these emission control systems. While franchised dealerships have usually had first-hand access to the service information needed to understand, diagnose, and repair problems associated with these systems, this has not always been the case for independent service facilities, or to aftermarket part manufacturers that design components that are compatible with OBD II systems. The Legislature found that a lack of competition created by this situation could result in increased repair costs for consumers and loss of business in the aftermarket industry. The U.S. EPA has estimated that up to 80 percent of automotive repairs are carried out by independent facilities. If repair work is overly difficult, expensive, or time-consuming, this could result in either repairs not being properly completed or consumers not having necessary emission-related repair done at all. In either case, air quality would be adversely impacted.

During the 1999-2000 legislative session, California addressed the service information concern through SB1146, which requires the ARB to adopt regulations no later than January 1, 2002, for the availability of information on the Internet. SB1146 was signed into law on September 2000.

In 1995, the U.S. EPA created service information regulations that required vehicle manufacturers to provide emission-related information for 1994 and later vehicles on an online database called FedWorld. More recently in 2001, the U.S. EPA issued a Notice of Proposed Rulemaking (NPRM) that introduces several amendments, most notably one that would make such information available from manufacturer-based websites on the Internet. These amendments have not yet been finalized by the U.S. EPA. ARB staff developed regulations that are substantially similar to those proposed in the U.S. EPA's NPRM, while still fulfilling all of the requirements mandated by SB1146.

The California regulations require motor vehicle manufacturers to make available for purchase the following service information to independents: 1) text-based information available to dealerships, such as service manuals, technical service bulletins, security system initialization procedures, and training materials; 2) OBD II descriptions; and 3) diagnostic and reprogramming tools and information. In addition, consistent with the provisions of SB1146, the proposed regulations establish enforcement provisions and

administrative hearing procedures to ensure compliance with the service information requirements.

The proposal does not create new emission reductions, but rather realizes the emission benefits attributed to California's Low Emission Vehicle (LEV) and OBD II programs. This is based on the expectation that emission-related malfunctions are promptly repaired due to the availability of service information, thereby allowing vehicles to remain close to their certified emission levels. As a reference, statewide emission reductions for the LEV and OBD II programs by 2010 are 9 tons per day (tpd), 337 tpd, and 146 tpd for reactive organic gases, carbon monoxide, and oxides of nitrogen, respectively.

At the December 13, 2001, hearing, the main issue of concern was the availability of initialization procedures as they relate to anti-theft immobilizers. In response to testimony heard on this issue, the Board adopted the staff's proposal, but directed staff to work with the motor vehicle manufacturers and the remanufacturers of on-board computers to attempt to see if a way exists that would allow remanufacturers to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security. The Board directed the staff to provide an update on this work within a year's time.

In adopting the regulation, the Board also directed the staff to modify the regulatory language through a 15-day notice to address two concerns. First, the Board wanted to narrow the scope of persons covered by the regulation consistent with the language of SB1146. Secondly, the Board directed the staff to provide vehicle manufacturers with a way to terminate business relationships with aftermarket diagnostic toolmakers that have not demonstrated an ability to produce tools of reasonable quality.

Lastly, the Board directed the staff to monitor the progress of motor vehicle manufacturers in meeting the provisions of the regulation as a whole, and to report back to the Board within two year's time with an update on this progress and recommendations for any amendments to the regulation that are deemed necessary.

ORAL TESTIMONY:

Aaron Lowe	Automotive Aftermarket Industry Association / Automotive Warehouse Distributors Association
John Cabral	Blue Streak Electronics
Jeff Trask	Motor And Equipment Manufacturers Association

Lt. Greg Williams	California Highway Patrol
Chuck Herr	California / Nevada Automotive Wholesalers' Association
Paul Freck	Automotive Traders Associations of California
Jim O'Neill	Automotive Service Councils of California
Will Woods	Automotive Trade Organizations of California
Greg Dana	Alliance of Automobile Manufacturers
John Cabaniss	Association of International Automobile Manufacturers
David Raney	American Honda Motor Company
John Trajnowski	Ford Motor Company
Dan Dryke	General Motors
Robert Gasaway	Alliance of Automobile Manufacturers / Association of International Automobile Manufacturers
James Gowan	Crestec Corporation

FORMAL BOARD ACTION:

The Board approved Resolution No. 01-55 by an 8-1 vote.

RESPONSIBLE DIVISION: MSCD

STAFF REPORT: Yes (74 pages)

01-10-3 Public Meeting to Consider Draft Recommendations on Guidance for Penalty Assessments at Petroleum Refineries**SUMMARY OF AGENDA ITEM:**

The staff presented to the Board the draft findings of an evaluation of district enforcement programs at petroleum refineries and draft recommendations on district enforcement practices, including the levels of penalties being assessed.

After reviewing the enforcement activities of the South Coast Air Quality Management District, the Bay Area Air Quality Management District, and the San Joaquin Valley Unified Air Pollution Control District, the staff has concluded that these districts' current enforcement programs provide an effective level of compliance inspections and records review for petroleum refineries. These districts have made commitments, in the form of assigning an inspector dedicated to each refinery, to provide the resources to carry out enforcement activities, including routine inspections, detailed inspections, and investigation of upset/breakdowns. The three districts respond to citizen complaints regarding petroleum

refineries, and both the Bay Area Air Quality Management District and the San Joaquin Valley Unified Air Pollution Control District have practices in place to inform complainants of the disposition of their complaints.

However, staff found that within each district, there were significant ranges of penalties assessed for violations of the same rules or regulations, with some violations being assessed a higher penalty than other violations of the same rule. There were also differences in the amounts of penalties collected for violations of similar rules from district to district. This range of settlements is likely due to a number of factors, including: the severity of the circumstances that resulted in each NOV, the amount of time that elapsed before corrective action, if any, was taken by the facility, statutory factors that must be considered, and other intangible factors such as the strength of the evidence of the violation. In addition, differences between the districts in penalty assessments are likely attributable to differences in the stringency of the particular district rules involved, district enforcement practices and policies, and differences in the processes that each district uses in reaching mutual settlements.

Staff believes the minimum penalties that have been assessed in settlements of petroleum refinery NOVs in the districts generally should be higher. Staff committed to work with the affected districts to develop uniform civil penalty protocols for refineries.

The Board heard public testimony from representatives of Bay Area and South Coast Air Quality Management Districts, the Western States Petroleum Association, the Western Independent Refiners Association, Phillips Petroleum and Communities for a Better Environment. Communities for a Better Environment was supportive of staff's findings, while the Bay Area and South Coast Air Quality Management Districts were neutral. The Western States Petroleum Association, the Western Independent Refiners Association, and Phillips Petroleum did not agree with staff's findings.

ORAL TESTIMONY:

Robert Kwong	BAAQMD
Peter Mieras	SCAQMD
Ed Manning	Western States Petroleum Association
Bahram Fazeli	Communities for a Better Environment
Jeff Callender	Phillips Petroleum
Craig Moyer	Western Independent Refiners Association

FORMAL BOARD ACTION: None

RESPONSIBLE DIVISION: SSD and the Office of Legal Affairs

STAFF REPORT: Yes (43 Pages)

**01-10-4 Public Meeting to Consider Approval of Proposed
Environmental Justice Policies and Actions**

SUMMARY OF AGENDA ITEM:

Staff presented ARB's "Proposed Policies and Actions for Environmental Justice (Policies)," which provides a framework for incorporating environmental justice into the ARB's programs consistent with the directives of State law.

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. The Policies apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low-income and minority communities.

The Policies cover the full spectrum of ARB activities. The main elements of the Policies are (1) integrating environmental justice considerations into ARB programs; (2) strengthening outreach and education; (3) reducing health risks from air pollution; (4) strengthening enforcement; (5) considering cumulative health risks when developing and implementing our programs; (6) working with local air districts, local land-use agencies, and transportation agencies to develop ways to consider and reduce cumulative health risks from air pollution; and (7) supporting research to better understand and reduce cumulative health risks in communities. Associated with each of the Policies are a number of action items, some of which involve local air districts and other agencies.

In the course of developing the Policies, staff worked with stakeholders comprised of representatives from community groups, environmental organizations, local air districts, industry, and other agencies. Staff also contacted many local, State, and community-based organizations throughout the State to share and gather comments on the proposed Policies. Staff held public workshops in Oakland and Carson on November 13 and 15, 2001, respectively.

ORAL TESTIMONY:

Gloria Romero	State Senator, 24 th Senate District
Marco Antonio Firebaugh	Assemblymember, 50 th Assembly District
Adolfo Chaidez	Congresswoman Hilda L. Solis' Office
Denise Ng	Assemblymember Judy Chu's Office
Nancy Sutley	California Environmental Protection Agency
Marlene Grossman	Pacoima Beautiful
Julia Lopez	Pacoima Beautiful
Dale C. Tatum, Ph.D.	Community Coalition for Change
Jacquelin Hamilton	Environmental Defense
Theodis McLeod	Community Coalition for Change
Robina Suwol	Citizen
Nicholas Baker	Citizen
Cynthia Babich	Del Amo Action Committee
Martha Arguello	Physicians for Social Responsibility
Luz Palomino	Citizen
Roy Ababi	Citizen
Janie Auirre	Communities for a Better Environment
Enrique Manzanilla	U.S. EPA, Region 9
Jane Williams	California Communities Against Toxics
Barry Wallerstein	California Air Pollution Control Officers Association
Peter Hess	Bay Area Air Quality Management District
Dionesia Rivas	Communities for a Better Environment
Karina Hernandez	Communities for a Better Environment
Augustin Cheno	Communities for a Better Environment
Augustine Cebada	Brown Berets
Jesse N. Marguez	Wilmington Coalition
Rodger Paige	Citizen
Gertrude Schwab	Citizen
Alina Bueno	Childhood Injury Prevention Center
Bill Schwab	Citizen
Paula Forbis	Environmental Health Coalition
Sonia Rodriguez	Citizen
Francisca Jimenez	Citizen
Rosia Lopez	Citizen
Cindy Tuck	California Council for Environmental & Economic Balance
Catherine Reheis-Boyd	Western States Petroleum Association
Curtis Coleman	California Manufacturers and Technology Association
Nadia del Callejo	Communities for a Better Environment/ Youth for Environmental Justice
Horacio Arroyo	Communities for a Better Environment/ Youth for Environmental Justice

Patti Krebs	San Diego Industrial Environmental Association
Tim Carmichael	Coalition for Clean Air
Joe Lyou	California League of Conservation Voters Education Fund
Barbara Lee	Northern Sonoma County Air Pollution Control District
Marilyn F. Solomon	South Coast Air Quality Management District
Luis Cabrales	California League of Conservation Voters Education Fund
Carlos Porras	Communities for a Better Environment
Bahram Fazelli	Communities for a Better Environment
Julie Masters	Natural Resources Defense Council
Enrique Chiok	American Lung Association of Los Angeles County
Anita Mangles	Western States Petroleum Association
T. L. Garrett	Port of Los Angeles

FORMAL BOARD ACTION:

The Board approved the Resolution No. 01-56 by a unanimous vote.

RESPONSIBLE DIVISION: PTSD

STAFF REPORT: No